

## **REMARKS**

In an Office Action dated August 23, 2007, the Examiner has required restriction under 35 U.S.C. § 121 to one of the inventions listed below, and has asked the Applicant to affirm the Applicant's prior oral election of Invention IV:

- I. Claims 1–20, drawn to physical activity, classified in class 434, subclass 247.
- II. Claims 21–23, drawn to nutrition, classified in class 434, subclass 127.
- III. Claims 34–40, drawn to performance, classified in class 434, subclass 238.
- IV. Claims 41–44, drawn to injury, classified in class 434, subclass 262.
- V. Claims 45–55, drawn to devising a training scheme, classified in class 434, subclass 247.

The Examiner also acknowledged the Applicant's claim for foreign priority based on an application filed in the United Kingdom on March 24, 2003, but noted that a certified copy of Application No. 0306734.5 had not been filed as required by 35 U.S.C. § 119(b). Last, the Examiner rejected Claims 45–49, 51, 52, and 54–55 under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. in view of Petrus. Claim 50 was rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. in view of Petrus further in view of Blau et al.

### **Restriction Requirement**

During a telephone conversation with the Examiner on August 13, 2007, a provisional election was made without traverse to prosecute the invention of Group V, claims 45–55. The Applicant hereby affirms this election. Claims 1 to 44 have been withdrawn from consideration.

### **Certified Copy of Foreign Application**

A certified copy of Application No. 0306734.5 has been requested and will be filed under separate cover.

### **Rejection of Claims 45 & 54 under 35 U.S.C. 103(a)**

The Examiner states that Gordon discloses a first computer means for processing data (computer 110) wherein each user selects a sport (para. 16) and inputs information concerning his or her physiological profile (para. 15). Office Action, para. 13, p. 11. The computer then formulates an exercise program. The Examiner further states that Petrus “teaches having a database which stores for each of a plurality of health profiles a record of an idealized physiological profile . . . and compares the physiological profile with the idealized physiological profile.” *Id.* at 11–12. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to “include storing ideal health profiles and having the ability to compare a person’s health information to an ideal health profile . . . so that an individual will be able to determine their nutritional needs in comparison to an ideal healthy person/profile.” *Id.* at 12.

The Applicant respectfully disagrees with the Examiner’s characterization of Petrus. Petrus discloses a process for determining dietary supplements of vitamins, minerals, amino acids, enzymes, herbs, and other nutritional supplements. Petrus, abstract. However, rather than using an idealized profile, Petrus makes use of “a health profile for a person of the consumer’s age and health history background.” *Id.* at col. 2, ln. 22–23. This profile is for a normal healthy person of the user’s age and health history and not for some other desired profile. The user cannot select what profile is used for comparison because the profile is established by fixed characteristics such as age, sex, physical activity, dietary habits, past medical history, and other items covered in a questionnaire. *Id.* at col. 2, ln. 65 to col. 3, ln. 2.

This contrasts with the Applicant’s invention. Like Gordon, the user chooses a sport but unlike Gordon the Applicant’s system retrieves an “idealized physiological profile” for the

relevant sport or sports. *See* Claims 45 & 54. There is no set sport-specific exercise plan. Rather, the current fitness level and abilities of the user are measured and the differences between the current abilities and the desired abilities as defined by the idealized physiological profile are compared. The differences highlighted are used to generate a personalized exercise plan. Claims 45 and 54, therefore, differ from Gordon in using an idealized physiological profile for a particular sport. The Applicant's invention does not have a generic exercise plan for each sport but instead has an idealized physiological profile of what a successful player of that sport should be like. Nothing in Gordon, Petrus, or Gordon in view of Petrus teaches, motivates, or suggests this unique feature of the Applicant's invention.

#### **Rejection of Claims 46–49, 51–53, and 55**

Claims 46–49 and 51–53 depend from Claim 45. Because Claim 45 defines a unique invention for the reasons cited above, Claims 46–49 and 51–53 should be allowed.

In regards to Claim 55, the Examiner states that Petrus teaches “comparing the physiological profile input[ted] by each person with the varied physiological profile selected by the individual.” The Applicant again respectfully disagrees with the Examiner's characterization of Petrus. The word, varied, is not found in the Petrus written specification, nor is it found in the claims. “Vary” and “variation” appear only once in Petrus, and are used to describe potential users in very general terms: “We are all biochemically different, and our dietary nutrient requirements for optimal health vary. Each of us is unique due to variations in our genetics, lifestyle, dietary habits and health problems.” Col. 1, ln. 13–14.

Nothing in Petrus, and nothing in Gordon in view of Petrus, teaches, suggests, or motivates the Applicant's unique invention of “vary[ing] the pre-programmed physiological profile” and “compar[ing] the physiological input by each sports person with the varied

physiological profile selected by the sports person . . . to formulate[ ] a training regime.” The Applicant’s invention allows the user to select a sport and if the sport selected suggests a training program that is unfeasible due to the user’s natural abilities or time restraints, then the user is free to choose another sport. This is not the case with Petrus because the chosen standardized profile is not selectable by the user.

#### **Rejection of Claim 50**

Claims 50 depends from Claim 45. Because Claim 45 defines a unique invention for the reasons cited above, Claim 50 should be allowed.

#### **Conclusion**

It is the Applicant’s belief the amendments herein place the application in condition for a Notice of Allowance, which is respectfully requested. Claims 45, 54, and 55 should be allowed because they disclose a unique invention not rendered obvious by Gordon in view of Petrus. Because Claims 46–53 depend from Claim 45, they should be allowed.

Enclosed is a Petition and Fee for a Three-Month Extension of Time. Please charge Deposit Account No. 50-1971 the amount of \$1,050.00 to cover this extension of time fee. Further, charge any additional fees required by this paper or credit any overpayment to Deposit Account No. 50-1971.

Should any other amendments be necessary to place the application in condition for a Notice of Allowance, Examiner Frisby is invited to call the undersigned at the below noted telephone number.

Respectfully submitted,



Chad M. Hinrichs Date: April 10, 2008

Registration No. 45,836

PTO Customer No. 28,827

GABLE GOTWALS

100 West 5th St., 10th Floor

Tulsa, OK 74103

Tel: (918) 595-4963

Fax: (918) 595-4990

E-mail: [iplaw@gablelaw.com](mailto:iplaw@gablelaw.com)